CCRB INVESTIGATIVE RECOMMENDATION

Investigator:		Team:	CCRB Case #:	☐ Force		Discourt.	U.S.
Whitney Beber		Squad #9	201804049	☑ Abuse		O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precinc	t: 18	Mo. SOL	EO SOL
Friday, 05/18/2018 9:30 AM		In front of § 87(2)(b)		45	11	1/18/2019	11/18/2019
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/T	ime Rec	eived at CCI	RB
Sun, 05/20/2018 11:36 PM		CCRB	On-line website	Sun, 0	Sun, 05/20/2018 11:36 PM		
Complainant/Victim	Type	Home Addre	ss				
Witness(es)		Home Addre	ss				
Subject Officer(s)	Shield	TaxID	Command				
1. POM Eleodoro Perez	26923	948401	045 PCT				
Witness Officer(s)	Shield N	o Tax No	Cmd Name				
1. POM Gregg Albaum	02076	956376	045 PCT				
Officer(s)	Allegatio	on		I	nvestig	ator Recon	nmendation
A.POM Eleodoro Perez		olice Officer Eleodoro F vehicle.	Perez searched (8 87(2)				

Case Summary

On May 20, 2018, \$87(2)(b) filed the following complaint with the Civilian Complaint Review Board via the online website.

was moving three cars for alternative parking. One of those vehicles, a blue 2004 Mazda 6, belonged to his girlfriend street was what the driver's side passenger door of her car was wide open. Street was blocking approximately half of a pedestrian ramp. When he first noticed this, he was on the corner of Parker Street and Maclay Avenue walking towards Stearns Street. He saw Police Officer Eleodoro Perez, of the 45th Precinct, inside street and towards the car. When he was approximately 15-20 feet away from her car, Police Officer Perez exited her car through the open door. Police Officer Perez told street and Maclay Albaum, also of the 45th Precinct, issued street and pedestrian ramp. Police Officer Gregg Albaum, also of the 45th Precinct, issued street and mass approximately 15-20 feet away from her car, Police Officer Perez told street and mass approximately 15-20 feet away from her car, Police Officer Perez exited her car through the open door. Police Officer Perez told street and Maclay Avenue walking towards the car. When he was approximately 15-20 feet away from her car, Police Officer Perez exited her car through the open door. Police Officer Perez told street Gregg Albaum, also of the 45th Precinct, issued street.

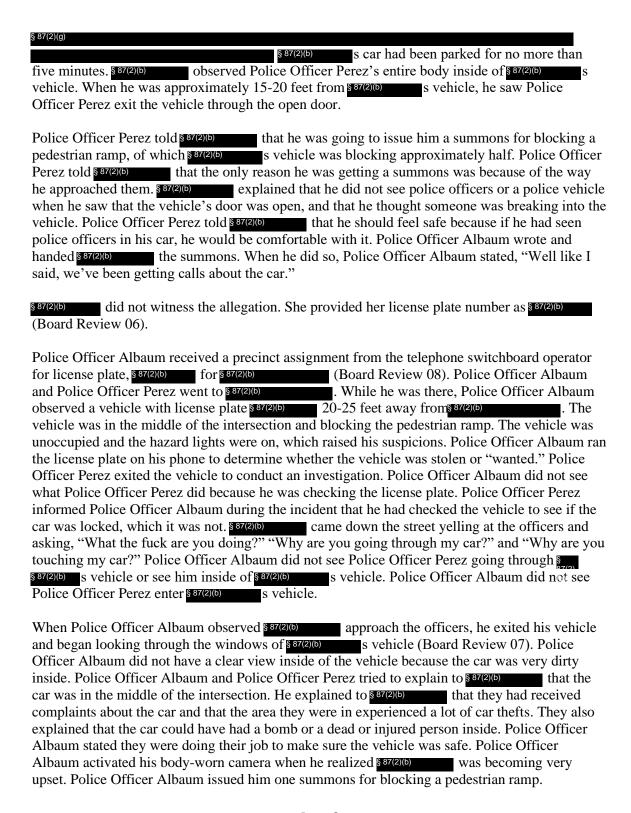
provided one video of his conversation with Police Officer Albaum and Police Officer Perez following his observation of Police Officer Perez in \$87(2)(b) s vehicle which was filmed with his cell-phone (Board Review 04). \$87(2)(b) provided a video filmed with her cell-phone which depicted a small portion of the conversation (which did not depict any FADO allegations) (Board Review 04). Video footage of this incident was obtained from both Police Officer Albaum's and Police Officer Perez's body worn cameras (Board Review 01 and 02).

Findings and Recommendations

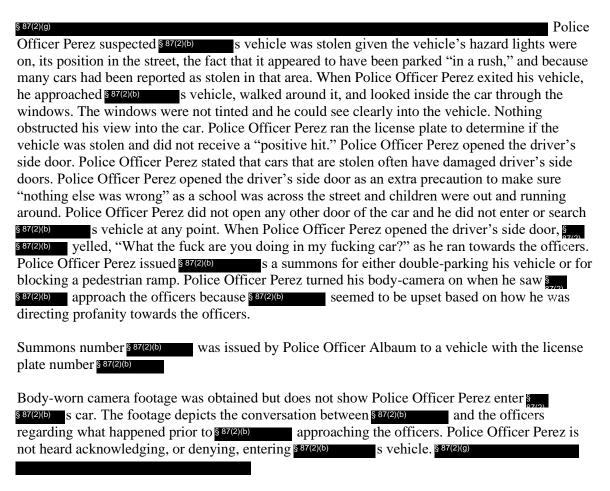
Allegation A-Abuse of Authority: Police Officer Eleodoro Perez searched servenicle.

s telephone statement, on May 18, 2018, at approximately 9:30 a.m. in the As per § 87(2)(b) vicinity of § 87(2)(b) , he was moving three cars for alternative parking. One of the § 87(2)(b) vehicles, a blue 2004 Mazda 6, belonged to his girlfriend, § 87(2)(b) did not have tinted windows and the only thing inside the car was a bouquet of flowers and a hat on the back seat. He began moving the cars one at a time. After parking the first two vehicles, he was returning to § 87(2)(b) s vehicle when he noticed that the driver's side passenger door of her car was wide open. Her car had been parked for no more than seven minutes before he saw an individual in her car. When he ran towards the car he realized that the individual was Police Officer Eleodoro Perez. Police Officer Perez exited § 87(2)(b) s vehicle, and closed the door. asked Police Officer Perez why he was in the vehicle and what was going on. Another officer, identified as Police Officer Gregg Albaum told § 87(2)(6) s car because they wanted to make sure that there was no one who was unconscious inside of the vehicle. Police Officer Perez told \$87(2)(b) that they were going to issue him a summons because of where the vehicle was parked. Police Officer Albaum issued § 87(2)(b) a summons for blocking the pedestrian ramp.

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<u>People v. Harris</u>, 160 A.D. 2d 515 established that opening a car door constituted a search (Board Review 09). In <u>People v. Harris</u>, the defendant was stopped by police officers who received a radio report of a man with a gun who had fired shots at the complainant, the report contained a detailed description of the man and his parked vehicle. The court ruled that an officer opening the car door and looking inside was a justified and minimal intrusion reasonably related police response to the detailed report of a man who had recently fired a gun.

<u>People v. Torres</u>, 74 N.Y. 2d 224 noted that a police officer's entry into a citizen's automobile and his inspection of personal effects located within are significant encroachments upon that citizens' privacy interest (Board Review 10). It noted that such intrusions must be both justified in their inception and reasonably related in scope and intensity to the circumstances which rendered their initiation permissible.

In <u>People v. Vasquez</u>, A.D. 2d 327, the court found that an officer's action of leaning into the car was not intrusive because it was an attempt to communicate better with the passenger and that as a protective measure, the police were allowed to open the door without any overt act by the defendant or his passenger (Board Review 11). The court noted that a valid investigative stop of a car may be accompanied, as a protective measure, by the opening of the car door and a directive

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from the police to the occupants to exit the car. The court also noted that the opening of the car door lessens to a substantial degree the risk of injury to the officer from the use of a gun by a passenger. People v. Vasquez noted that in determining the unreasonableness of a search and seizure the total circumstances must be considered.

§ 87(2)(g)	
§ 87(2)(g)	
3 0. (=)(9)	
§ 87(2)(g)	
	Civilian and Officer CCRB Histories
•	This is the first CCRB complaint to which §87(2)(b) has been a party (Board Review
	12).
•	This is the first CCRB complaint to which §87(2)(b) has been a party (Board Review
	13).
•	Police Officer Perez has been a member of service for eight years and has been a subject
	two complaints and two allegations, none of which have been substantiated. §87(2)(9)
	Mediation Civil and Culminal Histories
	Mediation, Civil and Criminal Histories
	S 97/9Vb) dealined to mediate this complaint
•	§ 87(2)(b) declined to mediate this complaint. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
•	(3 of (2)(b)) (33 oo(1)(3)a(4)) (3 of (2)(b))

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[§ 87(2)(b)] [§§ 86	6(1)(3)&(4)] [§ 87(2)(c)]		
Squad No.:			
Investigator:	Signature	Print Title & Name	Date
Squad Leader:	Signature	Print Title & Name	Date
Reviewer:	Signature	Print Title & Name	Date

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